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Attachment A

FER/JSW/acr 1/25/2012

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902M) for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2012.	Application 10-12-005 (Filed December 15, 2010)
And Related Matter.	Application 10-12-006

ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S RULING REGARDING MOTION OF THE UTILITY WORKERS UNION OF AMERICA FOR A DIRECTIVE TO PROTECT EMPLOYEES

1. Summary

This ruling addresses the motion of the Utility Workers Union of America (UWUA) concerning its motion in these consolidated applications for "a directive to protect employees participating directly as witnesses or indirectly as sources of information."

Based on the reasons set forth below, including encouragement of public utility employees to inform the Commission of safety and reliability issues, UWUA's motion is granted based on the factual situation presented in these consolidated applications. Today's ruling does not prejudge the issue in Rulemaking (R.) 11-02-019 as to whether there should be rules preventing management retaliation, and does not rule on UWUA's request that a

Commission liaison person be appointed to facilitate the flow of information from utility employees.[1]

2. Background

UWUA filed its motion for a directive on September 22, 2011. A response in opposition to UWUA's motion was filed by Southern California Gas Company (SoCalGas) on October 7, 2011.

A similar motion was also filed by UWUA in R.11-02-019 concerning the safety of the natural gas systems in California.

Attached to both motions was a letter from UWUA to the Executive Director of the Commission requesting that a staff liaison from the Commission be designated "to work with UWUA and Southern California Gas Company to facilitate the flow of information from utility employees by addressing issues involving witnesses who are employees of Southern California Gas Company, to prevent any activity that may deter employees from bringing to the Commission relevant information and opinions through the UWUA or any other party." (Motion, App. A.)

As of today, no action has been taken on UWUA's motion in R.11-02-019 or on UWUA's request to the Commission's Executive Director.

3. Discussion of the Motion

UWUA's motion requests that a directive or protective order be issued to prevent SoCalGas from engaging in "retaliation, intimidation, adverse job activity, discrimination or any other activity" against members of UWUA who

[1] An e-mail ruling was issued on January 12, 2012 informing the service list that based on the reasons set forth in this ruling, that the September 22, 2011 motion filed by the UWUA was granted.

are employees of SoCalGas "if they bring forward to the Commission, personally or through their representatives, relevant information to assist the Commission in promoting public safety and reliable service, protecting the public from dangerous or inconvenient conditions, and assuring just and reasonable rates and adequate service." (Motion at 2.)[2]

UWUA's motion acknowledges in its motion that it "is not responding specifically to overtly offensive actions by [SoCalGas] or asserting at this time any specific adverse acts or threats with respect to any employee or representative by [SoCalGas]." (Motion at 2.) UWUA further contends that the directive or protective order it is seeking is a "prophylactic, anticipatory measure to assure a free flow of information to the Commission from utility employees." (Motion at 3.) UWUA suggests that the protective order that was granted in these proceedings on March 2, 2011, in the scoping memo and ruling (scoping ruling), concerning the orderly flow of information through discovery is equally applicable to UWUA's motion in that the directive seeks an assurance of an "orderly and unobstructed flow of information to the Commission from persons especially well positioned to provide it." (Motion at 3.) UWUA also contends that the purpose of having the Executive Director designate an employee to act as a liaison will help prevent the directive from becoming a burden on the assigned Administrative Law Judge.

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[2] UWUA's motion requests that the directive or protective order be in the form of the "Directive to Refrain from Adverse Action" which is attached to its motion as Appendix B.

UWUA's second argument is that its motion "constitutes a further response by UWUA to the directive issued by the Commission in the Gas Safety Rulemaking R.11-02-019 requesting comment on the issue of enhanced protection for employees bringing forward information in the gas safety subject matter area at the commission." (Motion at 4.) UWUA further contends that its planned testimony on proposals to improve utility safety and service to the public are within the list of issues contained in the March 2, 2011 scoping ruling, and also within the scope of R.11-02-019. UWUA notes that employees "may appear as witnesses offering testimony, or may be sources of information on which formal testimony, cross examination or argument is based." (Motion at 5.) UWUA further contends that the transparency in the flow of information from employees will be impossible if the utility can retaliate against the employees.

SoCalGas opposes UWUA's motion on several grounds and recommends that the motion not be granted.

SoCalGas' first argument is that the relief sought by UWUA's motion is a request for a preliminary injunction rather than a protective order, which governs the exchange of confidential information. In order for a preliminary injunction to be issued, SoCalGas contends that: (1) the moving party must be likely to prevail on the merits; (2) there must be irreparable injury to the moving party without such an order; (3) there must be no substantial harm to other interested parties; and (4) there must be no harm to the public interest. SoCalGas contends that UWUA's motion does not allege any actual or threatened unlawful conduct, and that the motion acknowledges that it is a "prophylactic, anticipatory measure." As such, UWUA's motion seeks to enjoin conduct that is entirely speculative, and since there is no actual or threatened conduct, there is no basis for finding that UWUA is likely to prevail on the merits.

Second, SoCalGas argues that UWUA's motion is misleading to employees because it "mischaracterizes the robust body of existing law that protects employees from retaliation by employers...." (SoCalGas Response at 5.) SoCalGas also notes that its collective bargaining agreement contains provisions regarding unjustified employment actions.

Third, SoCalGas argues that UWUA's motion fails to acknowledge the existing California and federal statute that protect employees from retaliation. SoCalGas contends that these statutes are found in California Labor Code § 1102.4 and related statutes, and in Labor Code § 6310, as well as in the Energy Reorganization Act of 1974 (42 U.S.C. § 5851), the National Labor Relations Act (29 U.S.C. § 158), and the Occupational Safety and Health Act (29 U.S.C. § 660(c)).

Fourth, SoCalGas argues that UWUA's motion seeks to pre-determine the issues being litigated in R.11-02-019. SoCalGas points out that one of the issues identified within that rulemaking is whether the Commission should "adopt rules to protect utility employees from management retaliation for bringing information to the Commission regarding unreported utility public safety issues." (SoCalGas Response at 12.) SoCalGas contends that all parties must be provided an opportunity in R.11-02-019 to develop a factual record before a decision on this issue is rendered, and UWUA's motion is "an inappropriate attempt to circumvent the Commission's rulemaking process." (SoCalGas Response at 13.)

SoCalGas also argues that: UWUA's motion misstates existing law concerning employees' rights and obligations; the granting of UWUA's motion would preclude SoCalGas from taking any adverse action against an employee which could result in harm to SoCalGas, its employees, and the public; and

UWUA's motion is a collateral attack on the SoCalGas motion for a protective order, which was granted in the March 2, 2011 scoping ruling, because it could create a loophole circumventing the protective order that is in place.

The various arguments of UWUA and of SoCalGas, as set forth in their pleadings, have been considered. UWUA's motion, as raised in these consolidated proceedings, should be granted for the following reasons.

First, although the September 2010 natural gas pipeline explosion involved the facilities of Pacific Gas and Electric Company, the workers of all public utility gas companies should be encouraged to come forward to provide the Commission with information regarding the gas utilities' practices and procedures as it relates to the safety and reliability of the gas utilities' transmission and distribution systems.

Five of the eight UWUA witnesses who are sponsoring testimony in these consolidated proceedings are current employees of SoCalGas. Although UWUA's motion and the testimony of these five witnesses do not allege any act by SoCalGas of retaliation, intimidation, adverse job activity, discrimination or any other activity that may place their employment status in jeopardy, the cooperation and testimony of gas utility employees in Commission proceedings should be encouraged rather than discouraged. Gas utility employees are knowledgeable about the day-to-day work activities of the gas utilities, and are invaluable sources of information regarding the safety and reliability of the gas system. If these same employees face job actions or a threat of such actions by their employer for disclosing safety and reliability issues to the agency with regulatory authority over the gas utilities, this will discourage employees from disclosing such information.

Second, although UWUA acknowledges its motion is a "prophylactic, anticipatory measure," and that the motion is not responding to any specific overt action by SoCalGas, the need to encourage a dialogue between gas utility workers and this Commission about gas safety and reliability outweighs the possible harm that could result to these gas utility workers, and to the safety of SoCalGas' customers and to the public, if the motion is not granted.

Third, we agree with SoCalGas that it should have "the ability to discipline its employees or take other appropriate actions to enforce employee compliance with applicable laws, regulations and internal policies." (SoCalGas Response at 3-4.) However, such disciplinary or other actions by SoCalGas cannot be related to, and undertaken because of, the disclosure of information provided by an employee of SoCalGas to the Commission concerning safety or reliability issues.

Fourth, the issue of "Should the Commission adopt rules to protect utility employees from management retaliation for bringing information to the Commission regarding unreported utility public safety issues," and are "such rules necessary or practical," is clearly a pending issue in R.11-02-019. (See R.11-02-010 at 14-15.) Any ruling adopted for these proceedings should be limited to the specific facts of this proceeding, and shall not prejudge this issue in R.11-02-019. In addition, UWUA's request that a Commission liaison person be named should be left to R.11-02-019 to decide.

Accordingly, for the reasons stated above, UWUA's motion in these consolidated proceedings should be granted as set forth below, and the issue of whether there should be rules to protect utility employees from management retaliation and whether there should be a designated Commission liaison person should be left to R.11-02-019 to decide

IT IS RULED that:

1. The September 22, 2011 motion of the Utility Workers Union of America for a directive is granted with respect to the factual situation presented in these consolidated proceedings.

   a. Except for disciplinary or other appropriate actions to enforce employee compliance with applicable laws, regulations, and internal policies of Southern California Gas Company (SoCalGas), SoCalGas shall not take any adverse action with respect to an employee's status or employment with SoCalGas who appears as a witness or otherwise furnishes information to the Commission in these consolidated proceedings.

2. The issue of whether there should be rules to protect utility employees from management retaliation for bringing information to the Commission regarding unreported utility public safety issues, and whether there should be a designated Commission liaison person to facilitate the flow of information from utility employees, shall be left to Rulemaking 11-02-019 to decide.

Dated January 25, 2012, at San Francisco, California.

/s/ MARK J. FERRON	/s/ JOHN S. WONG
Mark J. Ferron	John S. Wong
Assigned Commissioner	Administrative Law Judge

Attachment B

MF1/acr 3/14/2012

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.	Rulemaking 11-02-019 (Filed February 24, 2011)

RULING OF THE ASSIGNED COMMISSIONER GRANTING, ON AN INTERIM BASIS, THE MOTION OF THE UTILITY WORKERS UNION OF AMERICA, AND ADOPTING PROCEDURES FOR A PROPOSED REGULATION REGARDING WHISTLEBLOWER PROTECTIONS

1. Summary

This ruling grants, in part and on an interim basis, the motion of the Utility Workers Union of America (UWUA) for "a directive to protect employees participating directly as witnesses or indirectly as sources of information." This ruling further establishes procedures for considering a permanent and comprehensive Commission regulation protecting such employees or contractors.

2. Background

The Commission opened this proceeding to establish a new model of natural gas pipeline safety regulation applicable to all California intrastate pipelines in the aftermath of the tragic fire in the City of San Bruno, California on

September 9, 2010. One of the subjects set forth by the Commission was whether new whistleblower protections should be adopted.

On September 22, 2011, UWUA filed a motion for "a directive to protect employees participating directly as witnesses or indirectly as sources of information." UWUA filed nearly identical motions in both the pending consolidated general rate cases of San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas),[1] and in the present proceeding. On October 7, 2011, SoCalGas filed virtually identical responses opposing UWUA's motion in the rate cases and in the present Order Instituting Rulemaking (OIR) proceeding. Pacific Gas and Electric Company (PG&E) did not file any opposition to UWUA's motion. The Division of Ratepayer Advocates (DRA) filed a response on September 28, 2011, supporting UWUA's motion, to assist in ensuring a free flow of information addressing unsafe conditions without employees' fears of management retaliation.

UWUA seeks an order prohibiting the Respondent natural gas public utilities from threatening or utilizing coercive behavior to deter its employees from participating directly or indirectly in this proceeding or "if they bring forward to the Commission, personally or through their representatives, relevant information to assist the Commission in promoting public safety and reliable service, protecting the public from dangerous or inconvenient conditions, and assuring just and reasonable rates and adequate service." (UWUA Motion at 2.)[2]

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[1] Applications 10-12-005 and 10-12-006.

[2] UWUA's motion requests that the directive or protective order be in the form of the "Directive to Refrain from Adverse Action" which is attached to its motion as Appendix B.

UWUA contends that its motion constitutes a further response by UWUA to the directive issued by the Commission in this OIR requesting comment on the issue of enhanced protection for employees bringing forward information in the gas safety subject matter area at the commission. (UWUA Motion at 4.) UWUA further contends that the transparency in the flow of information from employees will be impossible if the utility can retaliate against the employees.

SoCalGas opposes UWUA's motion on several grounds, and recommends that the motion not be granted.

SoCalGas' first argument is that the relief sought by UWUA's motion is a request for a preliminary injunction rather than a protective order, which governs the exchange of confidential information. In order for a preliminary injunction to be issued, SoCalGas contends that: (1) the moving party must be likely to prevail on the merits; (2) there must be irreparable injury to the moving party without such an order; (3) there must be no substantial harm to other interested parties; and (4) there must be no harm to the public interest. SoCalGas contends that UWUA's motion does not allege any actual or threatened unlawful conduct, and that the motion acknowledges that it is a "prophylactic, anticipatory measure." As such, SoCalGas contends that UWUA's motion seeks to enjoin conduct that is entirely speculative, and since there is no actual or threatened conduct, there is no basis for finding that UWUA is likely to prevail on the merits.

SoCalGas next argues that UWUA's motion is misleading to employees because it "mischaracterizes the robust body of existing law that protects employees from retaliation by employers...." (SoCalGas Response at 5.) SoCalGas also notes that its collective bargaining agreement contains provisions regarding unjustified employment actions. SoCalGas also argues that UWUA's

motion fails to acknowledge the existing California and federal statutes that protect employees from retaliation. SoCalGas contends that these statutes are found in California Labor Code § 1102.5 and related statutes, and in Labor Code § 6310, as well as in the Energy Reorganization Act of 1974 (42 U.S.C.§ 5851), the National Labor Relations Act (29 U.S.C. § 158), and the Occupational Safety and Health Act (29 U.S.C. § 660(c)).

In addition, SoCalGas argues that it may lose the ability to discipline employees. SoCalGas maintains that UWUA's motion would grant complete immunity from any disciplinary action no matter how severe their misconduct. (SoCalGas Response at 10-12.)

Finally, SoCalGas argues that UWUA's motion seeks to pre-determine the issues being litigated in this OIR. SoCalGas maintains that employees are already required to report internally all concerns whenever they suspect possible unethical, unsafe or illegal behavior (internal employee reporting protocols). SoCalGas contends that all parties must be provided an opportunity in this OIR to develop a factual record before a decision on this issue is rendered. (SoCalGas Response at 13.)

On January 25, 2012, the assigned Commissioner and the assigned Administrative Law Judge (ALJ) granted UWUA's motion in the consolidated SDG&E and SoCalGas general rate case proceedings (Applications 10-12-005 and 10-12-006). In granting the motion, the assigned Commissioner and ALJ limited the ruling to factual circumstances presented in Applications 10-12-005 and 10-12-006 and left the overall issue of rules preventing management retaliation to this proceeding.

3. Discussion

The duty to furnish and maintain safe equipment and facilities is paramount for all California public utilities, and the Commission has the supervisory authority over the utilities to make sure they fulfill their safety obligation.[3]

Although the Commission would generally not get involved in employer-employee relations, the present circumstances require that the Commission staff be informed immediately of where and why safety problems are occurring, and what can be done to prevent further problems with regards to the utilities' natural gas facilities. The natural gas public utility employees may be critical to our comprehensive understanding of the safety issues at hand.[4]

Consistent with the ruling in Applications 10-12-005 and 10-12-006, I agree that UWUA's motion should be granted, on an interim basis, while the Commission considers adopting a regulation on whistleblower protections in this proceeding. It will serve the public interest for all California natural gas public utility employees to be able to provide the Commission or its staff with information concerning unsafe conditions without fearing employment retaliation from the utility. Gas utility employees are invaluable sources of information regarding the safety and reliability of the gas systems. If these same employees face job actions or a threat of such actions by their employer for disclosing safety and reliability issues to the agency with regulatory authority

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[3] See, e.g., Public Utilities Code §§ 701, 702, 761, 768.

[4] As used in this ruling, "employee" also includes employees of contractors of PG&E.

over the gas utilities, this will discourage employees from disclosing such information.

I also agree that the need to encourage a dialogue between gas utility workers and this Commission or its staff about gas safety and reliability problems which threaten the general public, as well as the workers, outweighs the possible harm that could result if the motion is not granted.

SoCalGas is correct that utilities should have "the ability to discipline its employees or take other appropriate actions to enforce employee compliance with applicable laws, regulations and internal policies." (SoCalGas Response at 12.) However, such disciplinary or other actions by SoCalGas cannot be related to, and undertaken because of, the disclosure of information provided by an employee of SoCalGas to the Commission concerning safety or reliability issues.

For these reasons, on an interim basis I grant UWUA's motion as set forth below to encourage the natural gas utilities' employees to report unsafe conditions or otherwise directly or indirectly participate in these proceedings. The protection to the natural gas utility employees is related solely to the safety information, which they report to the Commission or its staff, and does not grant the utilities' employees complete immunity from other disciplinary actions, which are unrelated to their cooperation with the Commission.

4. Procedures and Issues to Be Addressed Regarding Proposed New Regulation

Finally, the issue of "Should the Commission adopt rules to protect utility employees from management retaliation for bringing information to the Commission regarding unreported utility public safety issues," and are "such rules necessary or practical," is clearly at issue in this OIR.

To develop a record for Commission consideration on this issue, I adopt the following schedule:

Event	Date
Each Respondent shall file and serve a description of its existing internal employee reporting protocols for unethical, unsafe, or illegal activities, which includes the information in the Appendix attached to this ruling.	May 11, 2012
Workshop to identify deficiencies in current company internal employee reporting protocols and California laws or regulations, and to develop proposals for a new Commission regulation.	June 14, 2012 at 9:00 a.m. Golden Gate Training Room State Office Building 505 Van Ness Avenue San Francisco, CA
Staff Report and Recommendations, filed and served.	July 20, 2012
Parties Comments, filed and served.	August 10, 2012
Parties Reply Comments, filed and served.	August 24, 2012
Proposed Decision.	As soon as practicable.

IT IS RULED that:

1. The September 22, 2011 motion of the Utility Workers Union of America is granted, in part, on an interim basis until such time as the Commission adopts a regulation on this matter. Except for disciplinary or other appropriate actions to enforce employee or contractor compliance with applicable laws, regulations and internal policies of the utilities, the natural gas utilities shall not take any adverse action with respect to an employees or contractor's status or employment against an employee or contractor who appears as a witness or otherwise furnishes information to the Commission or its staff.

2. The procedural schedule set forth above is adopted, and the assigned Administrative Law Judge may modify the schedule if so required.

Dated March 14, 2012, at San Francisco, California.

/s/ MICHEL PETER FLORIO
Michel Peter Florio
Assigned Commissioner

APPENDIX

Each of the Respondents is instructed to provide the following information concerning their internal employee reporting protocols:

1. A description of its program;
2. The name of the utility department, to which the employees report the unethical, unsafe or illegal activities, and the name and title of the utility manager in charge of the department;
3. The number of times employees have reported unsafe activities or conditions to the utility during the past 5 years, broken down on a year-by-year basis (i.e., 2007 through 2011);
4. The number of follow-up investigations, after employees reported the unsafe activities or conditions, conducted by the utility during the past 5 years, broken down on a year-by-year basis, and the results of the investigations;
5. The number of employees, who reported unsafe conditions during the past 5 years and still are employed by the utility;
6. The number of employees, who have alleged during the past 5 years in writing, including complaints before the Labor Commissioner, the U.S. Department of Labor, or federal or state courts, that the utility has retaliated against the employee for reporting unsafe activities or conditions; and
7. Whether the utility has in place a program to protect whistleblowers, who report unsafe conditions to the Commission, and, if so, describe the program.

(END OF APPENDIX)

Attachment C

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.	R.11-02-019 (Filed February 24, 2011)

PACIFIC GAS AND ELECTRIC COMPANY'S
RESPONSE TO RULING

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Dated: May 11, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.	R.11-02-019 (Filed February 24, 2011)

PACIFIC GAS AND ELECTRIC COMPANY'S
RESPONSE TO RULING

This report responds to the March 14, 2012 Ruling of Assigned Commissioner Michel Peter Florio seeking information on gas utilities' existing internal employee reporting protocols for unethical, unsafe, or illegal activities.

As noted in the responses to the Ruling's specific questions, state and federal regulation prohibit retaliation. PG&E's policies also prohibit retaliation of any kind, including retaliation against employees and suppliers (including contractors) who raise complaints with the Commission. PG&E investigates concerns raised by employees, contractors, consultants, suppliers or vendors and takes appropriate action.

PG&E presents its response to each of the questions contained in the Ruling's Appendix A:

1. <u>A Description Of Its Program</u>

PG&E employees are encouraged to raise complaints about any topic, including unethical, unsafe or illegal activities. PG&E maintains four (4) formal means by which gas employees may raise concerns, including those that involve alleged fraud or safety violations. These mechanisms are described below:

- <u>Compliance and Ethics Helpline</u>: PG&E's Compliance and Ethics (C&E) department manages a 24-hour-a-day, 7-day-a-week helpline through which employees, contractors and customers anonymously may raise complaints or seek guidance.

- Compliance and Ethics E-mail Box: PG&E's C&E department maintains an e-mail box to which employees may submit concerns or questions.

- Corporate Security / Human Resources / Safety Engineering and Health Services: In addition to the Helpline, PG&E employees may contact the Corporate Security department, PG&E's Human Resources department or PG&E's Safety Engineering and Health Services department directly with concerns that require immediate attention.

- Annual Code of Conduct Questionnaire: Non-bargaining unit employees may also raise concerns through the annual Code of Conduct Certification Questionnaire.[1]

There are numerous means by which employees may raise concerns, ranging from these formal programs with logging and tracking mechanisms to informal communications with supervisors or fellow employees that are neither compiled nor formally tracked. In addition, PG&E maintains some tracking mechanisms that, while not intended to capture "allegations," may in some instances include information about such complaints.

In addition to the mechanisms listed above, on June 14, 2011, PG&E's President, Christopher Johns, sent an email to all employees asking that they send any information they may have related to the San Bruno incident to either a specific email box or to call the Compliance and Ethics Helpline. The responsive information received as a result of that outreach is included in this response.

Employees who raise concerns may seek guidance about compliance or ethics issues or confidentially report situations that require investigations. The Compliance and Ethics department (C&E) enters, tracks, and manages all concerns and questions brought to C&E's attention.

PG&E responds to all concerns promptly, investigates the concern, and follows up with each concern to provide closure. All reported violations of the Code of Conduct are investigated either by local management, Human Resource consultants, Equal Employment Opportunity

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1 Prior to 2010, PG&E's Business Conduct Questionnaire (BCQ) was issued to all non-bargaining unit employees. In 2010, the BCQ was replaced with the Code of Conduct Certification Questionnaire, which is issued annually for all non-bargaining unit employees. In 2010, the company issued a revised Code of Conduct. Bargaining unit employees received a copy of the Code and supervisors conducted tailboards on the Code.

(EEO) investigators, Corporate Security, Internal Audit, the Law Department, or Safety Engineering and Health Services. "Accounting Complaints" such as questionable accounting or auditing matters or internal controls are reviewed by the PG&E Corporation Senior Vice President and General Counsel. The Chairs of the Audit Committees of the Boards of Directors are informed of any material accounting complaints.

PG&E also reviews data about the concern to identify trends and then develops approaches to address those trends broadly. For example, as PG&E develops compliance and ethics training each year, PG&E always incorporate topics that have arisen through PG&E's Compliance and Ethics Helpline Program.

2. **The Name Of The Utility Department, To Which The Employees Report The Unethical, Unsafe Or Illegal Activities, And The Name And Title Of The Utility Manager In Charge Of The Department.**

The Compliance and Ethics Helpline and the Compliance and Ethics Email Box is managed by PG&E's Compliance and Ethics Department under Megan Janis, Director of Compliance and Ethics. The Corporate Security department is managed by Michael Peterson, Senior Director of Corporate Security. The area of the Human Resources Department that addresses employee concerns is managed by Andrew Williams, Vice President of Human Resources. The Safety Engineering and Health Services Department is managed by Linda Limberg, Senior Director Safety.

3. **The Number Of Times Employees Have Reported Unsafe Activities Or Conditions To The Utility During The Past 5 Years, Broken Down On A Year-By-Year Basis (i.e.,, 2007 Through 2011).**

In the past five years (2007 through 2011), there have been 30 reports of unsafe activities or conditions related to the gas business that came through the formal processes described in response to question 1.

2007	2008	2009	2010	2011
2	4	8	4	12

4. **<u>The Number Of Follow-Up Investigations, After Employees Reported The Unsafe Activities Or Conditions, Conducted By The Utility During The Past 5 Years, Broken Down On A Year-By-Year Basis And The Results Of The Investigations.</u>**

PG&E investigates all of the concerns raised by employees through the formal processes described in response to question 1. Where substantiated, PG&E takes action to correct unsafe conditions or halt unsafe activities. Where appropriate, PG&E may also counsel or discipline employees involved. Unsubstantiated means that there was not enough evidence to prove or disprove the allegation. Unfounded means that the evidence showed that there was no merit to the allegation. Guidance means that the caller was seeking guidance on how to address a situation.

The following shows the results of the investigations:

Year	Number of Cases	Outcome
2007	2	1 unsubstantiated 1 substantiated
2008	4	1 guidance 2 substantiated 1 unfounded
2009	8	6 unsubstantiated 2 unfounded
2010	4	1 unfounded 1 unsubstantiated 1 partially substantiated, partially unsubstantiated 1 withdrawn
2011	12	2 guidance 2 substantiated 1 withdrawn 7 unsubstantiated

5. **<u>The Number Of Employees, Who Reported Unsafe Conditions During The Past 5 Years And Are Still Employed By The Utility.</u>**

There were 30 reports of unsafe conditions related to the gas business raised through the formal processes described in response to question 1. Of those 30 reports, 14 were raised anonymously. Of the 16 reports where the employee identified him or herself, 13 employees are

employed by the utility (one case was reported by 2 employees), 3 employees are no longer employed by the utility, and one employee is now retired.

6. **The Number Of Employees, Who Have Alleged During The Past 5 Years In Writing, Including Complaints Before The Labor Commissioner, The U.S. Department Of Labor, Or Federal Or State Courts, That The Utility Has Retaliated Against The Employees For Reporting Unsafe Activities Or Conditions.**

There are numerous means by which employees may raise an oral or written allegation of retaliation for raising a safety complaint. Employees can raise such a concern to their supervisor, to the Compliance and Ethics Helpline or mailbox, to Corporate Security, Human Resources, or raise the issue in their response to the Annual Code of Conduct Questionnaire. In addition, employees in the bargaining unit may request their union file a grievance protesting a disciplinary or other action taken against them by management (e.g., unjust distribution of overtime) as lacking just cause, and later, during the course of the multi-step grievance resolution process, allege the action was based on retaliation. Employees may also send a "demand letter" to the human resource attorney in the law department alleging retaliation for raising a safety concern.

The utility tracks complaints to Compliance and Ethics, Corporate Security and the Human Resources investigatory group in a central database, the Case Management System (CMS), and retains responses to the Annual Code of Conduct Questionnaire. In response to this data request, the utility reviewed the CMS database[2], Code of Conduct Questionnaire and Business Conduct Questionnaire responses, Department of Labor Complaints, Labor Commissioner Complaints, demand letters, and lawsuits filed in state and federal courts it received over the last five years and determined that a total of 13 employees have alleged retaliation for raising a safety concern related to gas.

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[2] PG&E started including EEO complaints, including complaints of retaliation, in CMS in 2009. Thus, EEO complaints from 2009-2011 only were included in this review.

Bargaining unit grievances are retained in a centralized data base. Approximately 800 union grievances are filed per year. The database does not contain transcripts from grievance hearings. Supervisor inquiries resolved at the local level, which are generally more informal complaints, are not centrally tracked. The bargaining unit database was not reviewed, as the approximate 4,000 grievances filed over the last five years are not sorted or searchable in the database by the reason the grievant believes the action taken against them by management was unjust.

7. **Whether The Utility Has In Place A Program To Protect Whistleblowers, Who Report Unsafe Conditions To The Commission, And, If So, Describe The Program.**

PG&E prohibits retaliation of any kind, including retaliation against employees who raise complaints with the Commission. In addition, there are state and federal legal prohibitions against retaliation. (See e.g., Cal. Lab. Code Sections 1102.5, 6310; 18 U.S.C §1514A; 49 U.S.C. §60129.)

PG&E's Code of Conduct describes its position about protecting whistleblowers and raising concerns without fear of retaliation. Following is the entire "Raising Concerns" section from the Code of Conduct:

> We are all expected to communicate honestly and openly with supervisors and others in leadership positions and, in good faith, raise concerns, including those about safety; possible misconduct; and violations of laws, regulations, or internal requirements. When concerns are raised, employees in supervisory and other leadership positions are expected to:
>
> - Listen to understand,
> - Take concerns seriously,
> - When appropriate, contact internal resources to investigate, and
> - Take any appropriate action in response to investigation findings.
>
> Adversely changing an employee's condition of employment for a non-business reason (i.e., "retaliating") is not acceptable. Employees in supervisory and other leadership positions may not retaliate, tolerate retaliation by others, or threaten retaliation.

Following is the relevant statement from the "How to Raise Concerns" section:

> PG&E prohibits retaliation against anyone who raises good faith concerns or is involved in an investigation. PG&E will investigate any reports of retaliation and take the appropriate action.

The Compliance and Ethics training PG&E employees take annually emphasizes PG&E's policy prohibiting retaliation.

Just as PG&E is committed to ethical business conduct and compliance with applicable laws, regulations and policies, PG&E expects the same commitment from our vendors. In early 2011, PG&E reissued our Contractor, Consultant, Supplier and Vendor Code of Conduct to all of our suppliers. In the PG&E Contractor, Consultant, Supplier and Vendor Code of Conduct, PG&E prohibits retaliation against anyone who raises a concern or is involved in an investigation.

Following is the entire "Raising Concerns" section in PG&E's Contractor, Consultant, Supplier and Vendor Code of Conduct:

> The standards of conduct described in this code are critical to the ongoing success of PG&E's relationship with its Suppliers. If you encounter questionable activities, we encourage you to immediately bring them to our attention through your PG&E business contact or by contacting PG&E's Compliance and Ethics Helpline at 888-231-2310.
>
> You also can contact the Compliance and Ethics Helpline if you have concerns about questionable accounting or auditing matters or internal controls (collectively, "accounting complaints").
>
> The Helpline is available 24 hours a day, 7 days a week. It's a multilingual service that provides a safe place to ask compliance and ethics questions or to raise concerns.
>
> Helpline calls are handled confidentially to the extent permitted by law, and can be submitted anonymously without fear of retaliation.
>
> PG&E prohibits retaliation against anyone who raises concerns or is involved in an investigation. PG&E will investigate any reports of retaliation and take the appropriate action.

PG&E investigates allegations raised by contractors, consultants, suppliers or vendors and takes appropriate action.

Respectfully submitted,

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DATED: May 11, 2012

Attachment D

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

FILED
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Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.	)	R.11-02-019 (Filed February 24, 2011)

RESPONSE OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G)
AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M)
TO THE RULING OF THE ASSIGNED COMMISSIONER

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May 11, 2012

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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.	R.11-02-019 (Filed February 24, 2011)

RESPONSE OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) TO THE RULING OF THE ASSIGNED COMMISSIONER

Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) submit the following response to the March 14, 2012 Ruling of the Assigned Commissioner Granting, on an Interim Basis, the Motion of the Utility Workers Union of America, and Adopting Procedures for a Proposed Regulation Regarding Whistleblower Protections (March 14 Ruling). In the March 14 Ruling, the Assigned Commissioner requests that each Respondent to this proceeding "file and serve a description of its existing internal employee reporting protocols for unethical, unsafe or illegal activities" in preparation for an upcoming workshop on June 14. The purpose of this workshop and the Respondents' filings in advance of the workshop is to assist the Commission in developing a record on whether it is "necessary or practical" for the Commission to "adopt rules to protect utility employees from management retaliation for bringing information to the Commission regarding unreported utility public safety issues."[1]

Attached as an appendix to the March 14 Ruling, are seven topics that should be addressed by the Respondents in their filings. Those topics are:

[1] March 14 Ruling, pp. 6-7.

(1) A description of Respondent's program to report ethical or safety-related issues;

(2) "The name of the utility department, to which the employees report the unethical, unsafe or illegal activities, and the name and title of the utility manager in charge of the department";

(3) "The number of times employees have reported unsafe activities or conditions to the utility during the past 5 years, broken down on a year-by-year basis (i.e., 2007 through 2011)";

(4) "The number of follow-up investigations, after employees reported the unsafe activities or conditions, conducted by the utility during the past 5 years, broken down on a year-by-year basis, and the results of the investigations";

(5) "The number of employees, who reported unsafe conditions during the past 5 years and still employed by the utility";

(6) "The number of employees, who have alleged during the past 5 years in writing, including complaints before the Labor Commissioner, the U.S. Department of Labor, or federal or state courts, that the utility has retaliated against the employee for reporting unsafe activities or conditions"; and

(7) "Whether the utility has in place a program to protect whistleblowers, who report unsafe conditions to the Commission, and, if so, describe the program."

SoCalGas and SDG&E address each of these topics in the responses below.[2] As described in greater detail there, SoCalGas and SDG&E strive to have a workplace that is safety-focused and encourages open and informal discussion of ethical and safety related issues.

[2] Because the scoping memo provided little guidance with respect to these topic areas, SoCalGas and SDG&E have attempted to construe them in a manner that is consistent with what they believe to be the Commission's intent, but may seek to supplement this response if further clarification is provided.

1. Description of the SoCalGas and SDG&E Programs to Report Ethical or Safety-Related Issues

SoCalGas and SDG&E offer an extensive array of safety programs and have multiple avenues for employees to report unethical, unsafe, or illegal activities. Safety is embedded into all phases of the employee experience. It starts with the formalized training that employees receive when they begin their career. It is emphasized on the job, and then re-emphasized during the training they receive as they advance to new jobs. Completing work safely is interwoven into all parts of their training.

The Code of Business Conduct is SoCalGas and SDG&E's standard for maintaining a legally compliant and ethical workplace. The Code provides the necessary information, support and resources for employees to act ethically and in compliance with the laws affecting our business.

All employees receive copies of the Business Code of Conduct and are required to (a) periodically complete ethics and compliance training, and acknowledge that they understand and comply with these standards (which includes bringing any known or perceived, illegal behavior to the attention of their respective companies.); or (b) participate in annual policy review meetings which, for all SoCalGas bargaining unit employees, includes reviewing a companion "Employee Conduct and Responsibilities Policy."

Employees are encouraged to report any suspected violations of company policy. SoCalGas and SDG&E are committed to ensuring that any such concerns, when raised in good faith, are fully investigated and resolved, without retaliation.

The companies' values are comprised of five key employee attributes—ethical, respectful, high performing, forward looking, and responsible partner—which ultimately support an ethical business and safety culture:

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Ethical
Do the right thing
• Act with honesty and integrity
• Be open and fair
• Keep our commitments
• Earn people's trust

Respectful
People matter
• Listen, communicate clearly, be candid
• Embrace diversity of people and perspective
• Contribute individually, succeed as a team
• Treat safety as a way of life

High Performing
Deliver outstanding results
• Set tough goals and achieve them, act with urgency
• Reward superior performance, acknowledge successes
• Learn and improve
• Be accountable

Forward Looking
Shape the future
• Think strategically and critically
• Anticipate market needs
• Actively pursue and create opportunities
• Implement with discipline, manage risks

Responsible Partner
Create positive relationships
• Engage others, seek feedback, collaborate
• Support our communities
• Be a responsible environmental steward
• Do what we say we'll do

These expectations and values are the building blocks for the ethical and safety-focused cultures at SoCalGas and SDG&E.

Employees are trained to raise safety and ethical concerns of any kind to their immediate supervisor for rapid resolution. Employees are also trained to "stop the job" whenever employee or public safety is threatened. As a result, the majority of safety and ethical concerns are raised directly with supervisors and addressed expeditiously.[3] SoCalGas and SDG&E also maintain

[3] Formal tracking of safety issues elevated to immediate supervisors is not presently in place.

training programs, produce written and electronic communications, and have systems for employees to report hazards, close calls and near misses. SoCalGas and SDG&E have broad programs that incorporate employee and management involvement in furthering their safety culture.

Other avenues for reporting safety concerns include safety meetings, employee dialogue sessions and town hall meetings, safety committees, safety services staff, an illness prevention program, and a pipeline safety advisor:

Safety Meetings – SoCalGas and SDG&E conduct frequent, and in many cases daily, meetings with their employees to discuss employee, customer and system safety. Many of these meetings are led by employees, who are also safety committee members (see below for a description of our safety committees).

Employee Dialogue Sessions and Town Hall Meetings – Company Officers and Directors routinely conduct employee dialogue sessions and Town Hall meetings with employees. These sessions provide opportunities for employees to engage directly with top leadership and ask questions or express concerns about any topic, including safety.

Safety Committees – Hundreds of SoCalGas and SDG&E employees serve on safety committees. Membership in these committees rotates among the workforce. Local Safety Committees have been part of SoCalGas and SDG&E's safety cultures for decades. The Local Safety Committees are comprised of bargaining unit employees and management and meet regularly to discuss ways to foster safe work practices and to address any and all safety concerns raised by employees. In addition, Local Safety Committees meet with other safety committees, on a regular basis, to share ideas and best practices.

Safety committee members work on projects to reduce hazards and prevent injuries. The committees meet regularly with employees to share the results of their work. Safety Committee members participate in events where they are trained in different safety-related topics and where "best practices" are shared. They receive training on a variety of topics, including incident evaluation analysis, which many of them apply during incident investigations.

For many years, these safety committees have conducted annual Safety Congresses, in which hundreds of field and office employees participate. These Safety Congresses provide employees the opportunity to participate in dozens of different safety-related workshops, as well as "Talk to the Executives" dialogue sessions.

In addition, SoCalGas and SDG&E have Executive Safety Committees, which meet regularly at different work locations. These meetings provide a forum to discuss local safety issues within company districts and divisions. They give employees an opportunity to discuss what is working well and areas where safety can be improved.

Safety Services Staff – The Safety Services Staffs at SoCalGas and SDG&E are comprised of Health and Safety professionals who provide services to personnel throughout the utility. The Safety Services Staffs include Safety and Health Managers who serve as Safety and Health Team Leads, Safety and Health Business Advisors, Field Safety Advisors, a Senior Pipeline Safety Advisor, Ergonomists, Industrial Hygienists and Occupational Health Nurses.

Safety Services Staff provide technical and regulatory assistance for safety and health to client organizations. They implement and maintain company programs in client organizations. They counsel, guide and inform operating and corporate departments of safety issues relative to California Division of Occupation Health and Safety (Cal/OSHA), California Public Utilities Commission (CPUC) and United States Department of Transportation (DOT) regulations. They consult with company employees to establish employee safety plans and set employee safety goals. They also work with client groups to conduct accident and/or pipeline safety incident investigations, and provide on-site safety training.

In addition, Safety Services Staff work with client organizations to identify potential and existing safety hazards and unsafe work practices, and recommend corrections. They perform inspections of company facilities and work activities for compliance with Cal-OSHA and CPUC/DOT regulations, and company procedures. In addition, they participate in, and provide employee safety and occupational health perspective during major projects.

Safety Services Staff are also key participants in incident investigations. They review and analyze industrial incidents and motor vehicle accident reports to see that root causes were found and corrections made. They provide counsel and training to personnel to improve investigation techniques and the processes used to identify accident causes.

Finally, Safety Services Staff promote employee safety awareness and safe behavior and compliance company-wide. They serve on tool committees and recommend appropriate protective equipment. They provide continuing safety education and training to company personnel. They recommend work methods and solutions for specific situations; promote safety and health awareness, safe behavior, and safety compliance system-wide.

Illness Prevention Program (IIPP) – SoCalGas and SDG&E have established, implemented and maintained IIPPs in accordance with the Department of Industrial Relations' General Industry Safety Orders. The IIPPs include systems for communicating with impacted employees in readily understandable forms on matters relating to occupational safety and health. As part of their IIPPs, SoCalGas and SDG&E encourage employees to inform management of workplace hazards without fear of reprisal.

Senior Pipeline Safety Advisor – The Senior Pipeline Safety Advisor resides in the SoCalGas organization and provides services to both SoCalGas and SDG&E Gas Services. The Pipeline Safety Advisor understands and provides counsel on the established strategic programs for compliance with CPUC and DOT regulations. The Advisor serves as a liaison between SoCalGas and SDG&E, the California Public Utilities Commission Utilities Safety Branch (CPUCUSB) and the DOT Research and Special Programs Administration regarding pipeline safety regulation.

The position serves as liaison between Field Operations, Engineering and Operations and auditors during all CPUC pipeline safety audits. He or she supports the responsible manager during General Order 112-E CPUC compliance audits, communicates the measures the utility takes to prevent or rectify violations, and coordinates technical responses to auditor questions. He or she monitors and follows-up on audit findings and corrective actions. The Advisor also

participates in Cal/OSHA, CPUC, DOT, National Transportation Safety Board (NTSB) and other regulatory agency investigations.

In addition, the Senior Pipeline Safety Advisor serves as the point of contact for review of all potential non-compliant conditions requiring reporting to the CPUC or local authorities. He or she engages Engineering and Operations and Field Services personnel in developing initial notifications and data request responses directed to CPUCUSB involving potential and known pipeline safety violations. He or she also coordinates company responses to regulatory agencies regarding customer complaints pertaining to pipeline safety.

While a majority of safety issues are resolved quickly through the avenues identified above, if, for some reason, issues raised via these avenues are not promptly addressed or an employee is not comfortable raising a particular issue with his/her supervisor, the following more formalized methods of raising safety and ethical concerns are also available.

Corporate Compliance – As an alternative to raising issues directly with their immediate supervisors, employees are encouraged to raise ethics concerns through the Corporate Compliance Mailbox and/or the company's Chief Ethics Officer. When concerns are filed with the Corporate Compliance Mailbox or Chief Ethics Officer, a senior officer of the Company initiates an internal investigation into the allegations. All claims are investigated and resolved, consistent with the company's high ethical and safety standards. Between 2004 and 2009 complaints raised through the Corporate Compliance Mailbox or directly with the company's Chief Ethics Officer were logged in a spreadsheet format. Since 2009, complaints received through the Corporate Compliance Mailbox or the company's Chief Ethics Officer have been tracked through an electronic database.

Ethics Helpline – The Ethics Helpline is maintained through a third-party to provide callers with the ability to remain anonymous, and is available to all employees, vendors and customers, globally, 24 hours per day, seven days per week, in English and Spanish. When third-party Call Center employees receive a call, they provide a claim number, complete a report and upload the claim into our Claim Management System. Anonymous callers are asked to call

the Call Center again in two weeks to respond to potential requests for additional information and/or to be advised of the status of the investigation. Within minutes of the intake call being completed, the Law Department is notified of the report and reviews and assigns an employee, depending on the nature of the claim, from Human Resources, Security, Law and/or Audit Services to investigate the claim.

Upon conclusion of the investigation, the investigator prepares a report of the investigation which is then uploaded into our Claims Management System. The Law Department and Human Resources, in consultation with the investigative team, finalize the report with recommended actions to be taken. The Chief Ethics Officer reviews all reports and approves all actions to be taken and provides final comments/approval in the Claims Management System. No case is closed until all action items have been completed. The Chief Ethics Officer provides a summary of reports to the Sempra Audit Committee.

All of the records of Ethics Helpline calls are highly confidential, and are treated as such by Sempra, SoCalGas and SDG&E. Access to these records is limited internally to those persons who need to know the information in order to carry out their responsibilities to investigate and/or resolve the identified issues. Between 2004 and 2009 Ethics Helpline calls were logged in a spreadsheet format. Since 2009, complaints received through the Ethics Helpline have been tracked through an electronic database.

Collective Bargaining Agreement (CBA) – The CBA grievance process allows for represented employee grievances to be resolved at the local level between shop stewards and local management. To the extent the union is not satisfied with the first step resolution or response, the union may escalate the matter to Labor Relations personnel for investigation and/or resolution. After a request is received in Labor Relations for a second step hearing, the union will prioritize the cases it wants to schedule. If the union is still not satisfied with the resolution or response at the second step, the union may escalate the matter to arbitration. Labor Relations maintains records of all second step grievances and arbitrations.

2. The Name of the Utility Department, to Which the Employees Report the Unethical, Unsafe or Illegal Activities, and the Name and Title of the Utility Manager in Charge of the Department.

As described above, SoCalGas and SDG&E provide multiple avenues and methods for employees to report safety and/or ethical concerns. The backbone of SoCalGas and SDG&E's ethical safety culture is the requirement that all employees raise safety and ethical concerns of any kind, using the avenue they are most comfortable with. At SoCalGas and SDG&E, we believe that all employees, at every level, are responsible for maintaining our safe and ethical work environment. All utility departments share this responsibility.

SoCalGas and SDG&E each have officers who are responsible for the companies' overall employee safety culture. Jimmie Cho and Scott Drury, Vice Presidents of Human Resources, Diversity and Inclusion, have this role for SoCalGas and SDG&E, respectively. Each has a safety staff that is responsible for employee safety policies and procedures, as well as incident investigations and follow-up.

Joyce Rowland is the Chief Ethics Officer for the Sempra family of companies, including SoCalGas and SDG&E. Her role is to ensure the Business Code of Conduct is understood and adhered to, and that our Values are instilled and practiced, by every employee. She also oversees the Ethics Hotline and thorough follow-up on every issue that is raised.

3. The Number of Times Employees Have Reported Unsafe Activities Or Conditions to the Utility During the Past 5 Years, Broken Down on a Year-to-Year Basis (i.e., 2007 through 2011)

As explained above, with SoCalGas and SDG&E's values and safety-focused culture, the majority of safety and ethical concerns are raised directly with supervisors and addressed expeditiously. While a majority of safety issues are resolved quickly through this informal process, if for some reason issues raised with an immediate supervisor are not promptly addressed to the satisfaction of the employee or an employee is not comfortable raising a particular issue with his/her supervisor, the employee may elect to raise those issues through one of the three more formalized processes described above—the Ethics and Compliance

Mailbox/Chief Ethics Officer, the Ethics Hotline and/or, if the employee's employment is subject to the terms of a CBA, the union grievance process in the CBA. These three more formalized methods are tracked, and therefore, data responsive to this request for information was obtained from these three sources.

In conducting a search for data responsive to this request, SoCalGas and SDG&E searched available records for the formalized processes described above for the term "safety." All records of complaints that include that search term were further reviewed to determine whether the complaints were responsive to the question. In construing this question, SoCalGas and SDG&E interpret the phrase "unsafe activities or conditions" to refer to alleged safety violations that pertain to public safety and/or the safety of our system. Records of complaints that include the relevant search term, but do not appear responsive to our understanding of the question (*e.g.*, employee relations complaints that do not implicate system safety concerns and complaints that relate to personal safety equipment or working conditions), are not included, but can be included if the scope of this question is clarified to include such complaints within its scope.

Number of Times Employees Have Reported Unsafe Activities or Conditions

	2007	2008	2009	2010	2011
SoCalGas	2	1	3	--	3
SDG&E	1	1	--	1	--

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4. **The Number of Follow-Up Investigations, After Employees Reported the Unsafe Activities Or Conditions, Conducted by the Utility During the Past 5 Years, Broken Down on a Year-to-Year Basis and the Results of the Investigations.**

SoCalGas			
Year	**Number of Complaints**	**Number of Investigations**	**Results of Investigations**
2007	1	1	An employee contacted the Ethics Helpline to report suspicious activities by a fellow employee. The employee that was the subject of this complaint was suspended pending the investigation and his employment was ultimately terminated as a result of the investigation.
2008	2[4]	1	These two related complaints were not substantiated. Recommendations for counseling, additional training, and additional monitoring of employees were implemented.
2009	3[5]	1	These three anonymous complaints were addressed collectively. Human Resources representatives went to this work location to speak in-person with employees at this location about any issues they would like to discuss. The allegations of the three complaints were not substantiated. Employees were reminded of the work rules and their responsibility to follow those rules. Supervisors met with the employees at this work location and clarified expectations.
2010	--	--	
2011	3	3	All three of these complaints were received through the union grievance process and were investigated as part of that process. The first grievance was withdrawn by the employee and the union declined to pursue further action. With respect to the second grievance, the union has not requested a hearing or to pursue this further. The third grievance is in the process of being resolved with the union; a second step hearing date on the grievance has not yet been set.

[4] These two complaints are related and therefore, a single follow-up investigation of both complaints was conducted.

[5] These three anonymous complaints were received through the Ethics Helpline within minutes of each other and were deemed related, such that SoCalGas conducted a single follow-up investigation for all three complaints.

SDG&E			
Year	Number of Complaints	Number of Investigations	Results of Investigations
2007	1	1	This was an anonymous complaint received through the Ethics Helpline. The caller was asked to call back to provide additional information to enable SDG&E to complete its investigation, but the caller never called back, and the matter was closed.
2008	1	1	This complaint was raised by an employee through the union grievance process and was investigated and settled with the union as part of the union grievance process.
2009	--	--	--
2010	1	1	This complaint was received anonymously through the Helpline. The caller requested that a representative from Human Resources meet with employees at a specified location to hear their concerns. Two in-person meetings were conducted by a Human Resources representative and the employees' concerns were heard and responded to during those meetings. The employees' supervisor was counseled to meet with the employees more often to listen to and address their concerns and was also advised of SDG&E's strict policy against retaliation against employees.
2011	--	--	--

5. **<u>The Number of Employees, Who Reported Unsafe Conditions During the Past 5 Years and Are Still Employed by the Utility.</u>**

Because not all employee reports of safety concerns are formally tracked, we are unable to answer this question the way it was asked. However, we have a process whereby we review the circumstances of termination for every employee and no employee has ever been terminated for reporting an unsafe condition.

6. **<u>The Number of Employees, Who Have Alleged During the Past 5 years in Writing, Including Complaints Before the Labor Commissioner, the U.S. Department of Labor, or Federal or State Courts, that the Utility Has Retaliated Against the Employee for Reporting Unsafe Activities or Conditions.</u>**

SoCalGas and SDG&E are not aware of any complaints that fall into this category.

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7. **Whether the Utility Has in Place a Program to Protect Whistleblowers, Who Report Unsafe Conditions to the Commission, and, if so, Describe the Program.**

SoCalGas and SDG&E follow all whistleblower laws and, to our knowledge, have never been accused otherwise. For added protection, any employee discipline that is contemplated is first reviewed for appropriateness by Labor Relations and/or Human Resources. Similarly, all employee terminations are first reviewed by Legal staff for appropriateness. Hiring and promotional decisions for bargaining unit employees are governed by collective bargaining agreements; for non-bargaining unit employees, Human Resources is engaged in all decisions to assess appropriateness.

SoCalGas and SDG&E have strong ethical and safety-focused cultures, fostered by the comprehensive and multi-faceted approach described above. We have not experienced employee reluctance to report concerns using a channel of communication with which they are most comfortable.

Recently, in response to the Commission's directives in D.12-04-010, SoCalGas and SDG&E have begun to implement a program whereby employees that either work in the field or are involved with pipeline records/compliance in some capacity will receive training regarding the companies' Pipeline Safety Plans. Employees will be afforded the opportunity to provide input and advised of their right to contact the Commission anonymously to report any perceived breach of safety-related requirements. This information will also be provided to employees via posters that will be posted in the workplace.

In addition, numerous federal and state laws already provide protection for employees who raise ethical and/or safety concerns with the Commission. For example, the California Whistleblower Act provides that:

> (a) An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information

> discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.
>
> (b) An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.[6]

Pursuant to the Whistleblower Act, the California Attorney General must maintain a whistleblower hotline to receive calls from aggrieved persons. All calls received by the Attorney General must be referred to the appropriate government authority for review and investigation.[7] Employers must post a notice regarding "employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline described in Section 1102.7."[8] An employer who violates California's whistleblower protection law is "guilty of a misdemeanor" and an individual is subject to up to one year in jail and a $1,000 fine. Corporations may be fined up to $5,000, plus an additional civil penalty of up to $10,000 per violation.[9] Finally, the law permits employees to recover damages from the employer for any injury resulting from a violation of the statute.[10]

An employee may also file a common law claim for wrongful termination in violation of public policy. An employee need only show (i) a public policy; (ii) an adverse employment action that violates the public policy, such as a termination in retaliation for statutorily protected activity or for refusal to participate in illegal activity;[11] and (iii) damages resulting from the

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[6] Cal. Lab. Code § 1102.5 (a)-(b). (emphasis added)

[7] Cal. Lab. Code § 1102.7.

[8] Cal. Lab. Code § 1102.8.

[9] Cal. Lab. Code § 1102.5 and § 1103.

[10] Cal. Lab. Code § 1105. An aggrieved employee must file a claim with the California Labor Commissioner within six (6) months of the alleged violation. Cal. Lab. Code § 98.7. In *Campbell v. Regents of the Univ. of Cal.*, 35 Cal. 4th 311, 333-4 (2005), the California Supreme Court held that a litigant seeking damages under section 1102.5 is required to exhaust administrative remedies before the Labor Commissioner prior to bringing suit. The exhaustion of administrative remedies rule is "well established in California jurisprudence." *Campbell*., p. 321. "'[T]he rule is that where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act.'" *Id.*

[11] An "adverse employment action" may include actions other than termination.

adverse employment action.[12] So called "*Tameny*" claims are broad and permit employees to name any number of public policy claims. The policy must be supported by a statutory or constitutional provision, it must inure to the public interest, it must have been well-established at the time of the discharge, and the policy must be "fundamental" and "substantial."[13] In addition to the statutory protection offered under Labor Code section 1102.5, the California Supreme Court has held that discrimination against whistleblowing employees is contrary to public policy.[14] Thus, an employee may seek redress by filing a *Tameny* claim using as support the public policy outlined in Labor Code section 1102.5.

The California Occupational Safety and Health Act (Cal/OSHA) prohibits discrimination against employees who make oral or written complaints about workplace safety to either their employer or a governmental agency, or who institute or testify in proceedings under the Act.[15] In *Hentzel v. Singer Co.*, 138 Cal. App. 3d 290 (1982), the court explained that Section 6310 protects employees who complain in good faith about working conditions or practices that they reasonably believe to be unsafe.

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[12] Tameny v. Atlantic Richfield Co., 27 Cal. 3d 167 (1980).

[13] *See* Kirby Wilcox, California Employment Law, § 60.04.

[14] Sanchez v. Unemployment Ins. Appeals Bd., 36 Cal. 3d 575, 588 (1984). *See Colores v. Board of Trustees*, 105 Cal. App. 4th 1293, 1301, n.1 (2003) (Lab. Code § 1102.5 reflects broad public-policy interest in encouraging whistleblowers to report unlawful acts without fearing retaliation).

[15] *See* Cal. Lab. Code § 6310. ("(a) No person shall discharge or in any manner discriminate against any employee because the employee has done any of the following: (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative. (2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her. (3) Participated in an occupational health and safety committee established pursuant to Section 6401.7. (b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of unsafe working conditions, or work practices, in his or her employment or place of employment, or has participated in an employer-employee occupational health and safety committee, shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.")

An employee claiming a violation of Labor Code Section 6310 may file a complaint with the California Labor Commissioner. The employee must file the complaint within six months of the violation.[16] Potential remedies include rehiring or reinstatement, and reimbursement of lost wages and benefits, with interest and attorney's fees.[17]

Labor Code Section 1101 prevents employers from enforcing any rule or otherwise forbidding or preventing employees from participating in politics. In *Gay Law Students Association v. Pacific Telephone & Telegraph Co.*, 24 Cal. 3d 458 (1979), the court found that "political activity" should be read broadly to include litigation, wearing armbands, and associating with others for the advancement of ideas. Alleged violations of Section 1101 are brought in the same manner as claims for alleged violations of California's Whistleblower Protection Act, Section 1102.5.

Several Federal laws also protect employee whistleblowers and may apply to activities related to proceedings before the Commission. For example, the Pipeline Safety Improvement Act (PSIA), 49 U.S.C. section 60129 "Protection of employees providing pipeline safety information" provides, in pertinent part:

> (a) DISCRIMINATION AGAINST EMPLOYEE
>
> (1) IN GENERAL- No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)
>
> (A) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to any violation or alleged violation of any order, regulation, or standard under this chapter or any other Federal law relating to pipeline safety;
>
> (B) refused to engage in any practice made unlawful by this chapter or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;

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[16] *See, id.*, § 6317.
[17] *Id.*

(C) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or any other Federal law relating to pipeline safety;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or any other Federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or any other Federal law relating to pipeline safety;

(E) provided, caused to be provided, or is about to provide or cause to be provided, testimony in any proceeding described in subparagraph (D); or

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or any other Federal law relating to pipeline safety.

In addition, the Energy Reorganization Act of 1974 Provision Protecting Employees[18] prohibits employers from discriminating against any employee who notifies his or her employer of an alleged violation of, refuses to engage in any practice made unlawful by, or participates in a proceeding under the Energy Reorganization Act or the Atomic Energy Act of 1954. The National Labor Relations Act[19] protects the rights of employees to engage in self-organization, collective bargaining, and *mutual aid and protection*. The act prohibits adverse employment action (*e.g.*, discipline or discharge) based on union activity or *other concerted activity* relating to the employees' common interests, or the exercise of any rights under the act. The United States Occupational Safety and Health Act Provision Protecting Employees[20] prohibits the discharge or discrimination against any employee because he or she has instituted or testified in any proceedings under the Act or exercised rights afforded by its provisions.

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[18] 42 U.S.C. § 5851.
[19] 29 U.S.C. § 158.
[20] 29 U.S.C. § 660(c).

CONCLUSION

SoCalGas and SDG&E are proud of their strong safety record, which could only have been achieved through the dedication of our ethical and safety-focused workforce. We believe the strong ethical and safety values of our employees are best fostered and maintained through a comprehensive approach to ethics and safety that appropriately encourages open and informal discussions between employees and their immediate supervisors. We further believe the fact that we have few formal complaints to report in response to the Commission's queries is evidence of the success of our informal programs. We look forward to working with the Commission to build-upon and improve our existing program through this Rulemaking process.

Respectfully submitted,

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